

SENATE BILL NO. 214—SENATOR GUSTAVSON

MARCH 5, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing postconviction petitions for habeas corpus. (BDR 3-43)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to postconviction relief; requiring a person to obtain permission from the court before filing a second or successive petition for habeas corpus in certain circumstances; revising provisions governing the appointment of counsel for a postconviction petition for habeas corpus in which the petitioner has been sentenced to death; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a person who has been sentenced to death files a postconviction petition for habeas corpus to challenge the validity of the person's conviction or sentence, and the petition is the first petition for habeas corpus that challenges such validity, the court is required to: (1) appoint counsel to represent the petitioner; and (2) stay execution of the judgment pending the disposition of the petition and appeal. (NRS 34.820)

The Supreme Court of the United States has held that states are not required to provide counsel in postconviction proceedings. (*Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987)) The Court has also specified that this holding applies to both capital and noncapital cases. (*Murray v. Giarratano*, 492 U.S. 1, 10 (1989))

Section 5 of this bill provides that when the first postconviction petition for habeas corpus is filed by a petitioner who has been sentenced to death, the court is not required to but may appoint counsel to represent the petitioner. **Section 5** also removes the provision which requires a second or successive petition to be assigned to the judge or justice who considered the previous matter.

Section 1 of this bill provides that if a person has previously filed a postconviction petition for habeas corpus to challenge the validity of the person's conviction or sentence and the matter was adjudicated, the person may not file a second or successive such petition without first obtaining the permission of the court to do so. The person must file a petition for leave with the district court for



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21 the county in which he or she was convicted, and the judge must not grant leave
22 unless certain circumstances have been met.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 34 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. If a person has previously filed a petition that challenges*
4 *the validity of his or her judgment of conviction or sentence and*
5 *the matter was adjudicated, the person may not file a second or*
6 *successive petition that challenges the validity of his or her*
7 *judgment of conviction or sentence unless the person petitions the*
8 *district court for the county in which the petitioner was convicted*
9 *for leave to file a second or successive petition and the judge*
10 *grants leave to do so.*

11 *2. A petition for leave filed pursuant to subsection 1 must*
12 *include a proposed second or successive petition that challenges*
13 *the validity of the petitioner's conviction or sentence.*

14 *3. A copy of the petition for leave must be served by mail*
15 *upon the Attorney General and the district attorney in the county*
16 *in which the petitioner was convicted.*

17 *4. If the judge determines that a response or an answer to the*
18 *petition for leave is required, the judge shall order the Attorney*
19 *General or the district attorney, whichever is appropriate, to file a*
20 *response or an answer to the petition within 45 days or a longer*
21 *period fixed by the judge.*

22 *5. The judge must not grant leave to file a second or*
23 *successive petition pursuant to subsection 1 unless the judge:*

24 *(a) Has received a response or an answer to the petition for*
25 *leave from the Attorney General or district attorney, whichever is*
26 *appropriate, if a response or an answer is required pursuant to*
27 *subsection 4; and*

28 *(b) Determines that:*

29 *(1) The petitioner has demonstrated by clear and*
30 *convincing evidence in the petition for leave that he or she is*
31 *innocent of the crime for which he or she has been convicted or is*
32 *otherwise ineligible for the death penalty; and*

33 *(2) Each claim presented by the petitioner alleges facts and*
34 *legal theories which, if found to be true, would entitle the*
35 *petitioner to relief.*

36 **Sec. 2.** NRS 34.720 is hereby amended to read as follows:

37 34.720 The provisions of NRS 34.720 to 34.830, inclusive, *and*
38 *section 1 of this act* apply only to petitions for writs of habeas
39 corpus in which the petitioner:



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1 1. Requests relief from a judgment of conviction or sentence in
2 a criminal case; or

3 2. Challenges the computation of time that the petitioner has
4 served pursuant to a judgment of conviction.

5 **Sec. 3.** NRS 34.722 is hereby amended to read as follows:

6 34.722 As used in NRS 34.720 to 34.830, inclusive, *and*
7 *section 1 of this act*, unless the context otherwise requires,
8 “petition” means a postconviction petition for habeas corpus filed
9 pursuant to NRS 34.724.

10 **Sec. 4.** NRS 34.780 is hereby amended to read as follows:

11 34.780 1. The Nevada Rules of Civil Procedure, to the extent
12 that they are not inconsistent with NRS 34.360 to 34.830, inclusive,
13 apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive
14 ~~††~~, *and section 1 of this act*.

15 2. After the writ has been granted and a date set for the hearing,
16 a party may invoke any method of discovery available under the
17 Nevada Rules of Civil Procedure if, and to the extent that, the judge
18 or justice for good cause shown grants leave to do so.

19 3. A request for discovery which is available under the Nevada
20 Rules of Civil Procedure must be accompanied by a statement of the
21 interrogatories or requests for admission and a list of any documents
22 sought to be produced.

23 **Sec. 5.** NRS 34.820 is hereby amended to read as follows:

24 34.820 1. If a petitioner has been sentenced to death and the
25 petition is the first one challenging the validity of the petitioner’s
26 conviction or sentence, the court ~~†shall†~~:

27 ~~—(a) Appoint† :~~

28 *(a) May appoint* counsel to represent the petitioner ~~††~~ *pursuant*
29 *to NRS 34.750;* and

30 *(b) †Stay† Shall stay* execution of the judgment pending
31 disposition of the petition and the appeal.

32 2. The petition must include the date upon which execution is
33 scheduled, if it has been scheduled. The petitioner is not entitled to
34 an evidentiary hearing unless the petition states that:

35 (a) Each issue of fact to be considered at the hearing has not
36 been determined in any prior evidentiary hearing in a state or federal
37 court; or

38 (b) For each issue of fact which has been determined in a prior
39 evidentiary hearing, the hearing was not a full and fair consideration
40 of the issue. The petition must specify all respects in which the
41 hearing was inadequate.

42 3. ~~†If the petitioner has previously filed a petition for relief or~~
43 ~~for a stay of the execution in the same court, the petition must be~~
44 ~~assigned to the judge or justice who considered the previous matter.~~



1 ~~—4.1~~ The court shall inform the petitioner and the petitioner's
2 counsel that all claims which challenge the conviction or imposition
3 of the sentence must be joined in a single petition and that any
4 matter not included in the petition will not be considered in a
5 subsequent proceeding.

6 ~~15.1~~ 4. If relief is granted or the execution is stayed, the clerk
7 shall forthwith notify the respondent, the Attorney General and the
8 district attorney of the county in which the petitioner was convicted.

9 ~~16.1~~ 5. If a district judge conducts an evidentiary hearing, a
10 daily transcript must be prepared for the purpose of appellate
11 review.

12 ~~17.1~~ 6. The judge or justice who considers a petition filed by a
13 petitioner who has been sentenced to death shall make all reasonable
14 efforts to expedite the matter and shall render a decision within 60
15 days after submission of the matter for decision.

16 **Sec. 6.** The amendatory provisions of this act apply to a
17 petition that is filed on or after October 1, 2013.

